

1987

Florence Mae Oberhansly v. Leora Sprouse, Bow Valley Petroleum, Inc.; and the Estate of Ray Lavon Sprouse: Brief of Respondent

Utah Court of Appeals

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Thomas W. Bachtell, Frederick M. MacDonald; Pruitt, Gushee, and Fletcher; Attorneys for Respondent Leora Sprouse.

Recommended Citation

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STATE COURT OF APPEALS
BRIEF

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

DOCKET NO. <u>870214-CA</u>)	
FLORENCE MAE OBERHANSKY,)	
)	
Plaintiff and)	
Appellant,)	
)	
vs.)	
)	
LEORA SPROUSE, BOW VALLEY)	
PETROLEUM INC., and THE	)	Case No. 870214-CA
ESTATE of RAY LAVON SPROUSE)	
)	
Defendants and)	
Respondents.)	
)	

BRIEF OF RESPONDENT LEORA SPROUSE

On Appeal from the Judgment of the Seventh Judicial District
Court for Uintah County
Honorable Dennis L. Draney, District Judge

Thomas W. Bachtell, #0162
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Attorneys for Appellant

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COURT OF APPEALS

IN THE COURT OF APPEALS OF THE STATE OF UTAH

FLORENCE MAE OBERHANSKY,)	
)	
Plaintiff and)	
Appellant,)	
)	
vs.)	
)	
LEORA SPROUSE, BOW VALLEY)	
PETROLEUM INC., and THE)	Case No. 870214-CA
ESTATE of RAY LAVON SPROUSE)	
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Defendants and)	
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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF JURISDICTION AND NATURE OF PROCEEDINGS BELOW	1
STATEMENT OF ISSUE	2
STATEMENT OF THE CASE	
I. Nature of the Case	2
II. Course of Proceedings and Disposition in the Court Below	2
III. Statement of Facts	3
SUMMARY OF ARGUMENT	6
ARGUMENT	
I. Plaintiff Failed to Meet Her Burden of Establishing Issues of Material Fact to the District Court	8
II. Plaintiff is Barred from Raising Issues of Material Fact on Appeal	12
CONCLUSION	14
CERTIFICATE OF SERVICE	16
ADDENDUM	
Appendix "A" - Copy of Memorandum in Support of Defendant Leora Sprouse's Motion for Summary Judgment	
Appendix "B" - Copy of Memorandum in Support of Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment	
Appendix "C" - Copy of Reply Memorandum in Support of Defendant's Motion for Summary Judgment and Memorandum in Opposition to Plaintiff's Motion for Summary Judgment	
Appendix "D" - Copy of Oil and Gas Lease Dated April 11, 1957	
Appendix "E" - Copy of U.R.C.P. Rule 56	

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
<u>Celotex Corp. v. Catrett</u> , ____ U.S. ____, 106 S. Ct. 2548, 91 L.Ed 2d 265 (1986)	9,10,13
<u>Corbet v. Corbet</u> , 24 Utah 2d 378, 472 P.2d 430 (1970)	13
<u>Franklin Financial v. New Empire Development Co.</u> , 659 P.2d 1040 (Utah 1983)	12
<u>Haner v. Haner</u> , 13 Utah 2d 299, 373 P.2d 577 (1962) .	14-15
<u>Jacobson v. Jacobson</u> , 557 P.2d 156 (Utah 1976) . . .	11
<u>Thornock v. Cook</u> , 604 P.2d 934 (Utah 1979)	11
<u>Villeneuve v. Schamanek</u> , 639 P.2d 215 (Utah 1981) . .	13

Court Rules

Utah Rules of Civil Procedure, Rule 8(c)	13
Utah Rules of Civil Procedure, Rule 12(h)	14
Utah Rules of Civil Procedure, Rule 56(c)	8
Utah Rules of Civil Procedure, Rule 56(e)	11

Statutes

Utah Code Annotated § 57-1-3 (1953, as amended) . . .	10
Utah Code Annotated § 78-2a-3(2)(h) (1953, as amended)	1

FLORENCE MAE OBERHANSLY,

Plaintiff and
Appellant,

vs.

LEORA SPROUSE, BOW VALLEY
PETROLEUM INC., and THE
ESTATE of RAY LAVON SPROUSE

Defendants and
Respondents.

- 1 -

STATEMENT OF ISSUE

Does Plaintiff's failure to meet her burden under U.R.C.P. Rule 56(e) to raise issues of material fact to the District Court bar her from asserting on appeal that any such issues exist?

STATEMENT OF THE CASE

Nature of the Case

This is a quiet title action in which both Plaintiff and Defendant Leora Sprouse seek a decree quieting title to an undivided one-half interest in the oil, gas and other minerals in or underlying certain real property located in Uintah County.

Course of Proceedings and Disposition in the Court Below

Plaintiff commenced this action against Defendants Leora Sprouse, Bow Valley Petroleum, Inc. ("Bow Valley"), and the Estate of Ray Lavon Sprouse to quiet title to the disputed mineral interest. Defendant Leora Sprouse answered and counterclaimed asserting she is entitled to a decree quieting title to the same interest. The parties stipulated to a dismissal of Bow Valley with prejudice, on the condition that it interplead funds attributable to the mineral interest into the District Court (R-55) and it has done so.

Both Plaintiff (R-85) and Defendant (R-70) moved for Summary Judgment based on the same undisputed facts. On March 11, 1987, the District Court granted Defendant's Motion and denied Plaintiff's Motion ruling that: (1) Plaintiff failed to present any evidence either in her Complaint, or Reply to Defendant's Counter-claim to support her claim that she is entitled to 50% of the mineral rights in the subject property; and (2) Plaintiff failed to raise the defense of waiver in a timely manner and therefore waived that defense (R-117). By Summary Judgment dated March 27, 1987, the District Court entered judgment in favor of Defendant, quieting title to the disputed mineral interest in her favor (R-119).

STATEMENT OF FACTS

This case was decided by the District Court on cross motions for summary judgment. Substantially all of the undisputed facts presented to the court for its consideration were contained in the Memorandum in Support of Defendant Leora Sprouse's Motion for Summary Judgment (R-72-76; Appendix "A" hereto).¹ In her Memorandum in Support of Motion for Summary Judgment and in

¹The parties agreed upon a Stipulation of Facts (R-59-60). However, that Stipulation was filed in the District Court without the signature of Plaintiff's counsel or the attachments thereto. Accordingly, Respondent relies upon the facts as recited in the various memoranda described herein.

Opposition to Defendant's Motion for Summary Judgment (R-87-89; Appendix "B" hereto), Plaintiff conceded that Defendant's statement of the undisputed facts was accurate (R-87) and added one additional fact, i.e. a lease dated as of April 11, 1957 (R-87,88). In her Reply Memorandum in Support of Defendant's Motion for Summary Judgment and Memorandum in Opposition to Plaintiff's Motion for Summary Judgment (R-92-96; Appendix "C" hereto), Defendant accepted that additional fact as true (R-93).

Since those undisputed facts, and no others, were the only facts before the District Court, they are set forth verbatim as follows:

1. Plaintiff and Ray Lavon Sprouse were married in September, 1931, and later divorced pursuant to a Decree dated October 16, 1950. A copy of the Decree is attached to the Stipulation as Exhibit "A" (R-73 para. 1; see Appendix "A" to Appellant's Brief).

2. Defendant is the widow of Ray Lavon Sprouse and has succeeded to and is the current owner of his property (R-73 para. 2).

3. Ray Lavon Sprouse executed and delivered a Deed, dated October 16, 1950 and recorded October 17, 1950 as Entry No. 41468, Book A-7, page 338, by which he purportedly conveyed to Plaintiff an undivided 50% interest in the oil, gas, coal, and

other minerals laying in or under the following lands ("Subject Lands"):

HAYDEN FARM LAND

PARCEL No. 1: Beginning at the Northwest corner of the Northeast Quarter of Section 2, Township 1 South, Range 1 West, Uintah Special Meridian, and running thence East 106-2/3 rods; thence South 160 rods; thence West 106-2/3 rods; thence North 160 rods to the place of beginning, containing 106-2/3 acres and water shares that go with said parcel.

MOSLEY RANCH

PARCEL No. 2: Lots 1, 2 and 3 and the South half of the Northeast Quarter, and the North half of the Southeast Quarter, and the Southwest Quarter of the Southeast Quarter of Section 6, Township 3 South, Range 19 East of the Salt Lake Base and Meridian, containing 322.25 acres, more or less.

PARCEL No. 3: The West half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; the Northeast Quarter of the Southwest Quarter; the West half of the Northeast Quarter and the East half of the Northwest Quarter of Section 7, Township 3 South, Range 19 East, Salt Lake Base and Meridian and the Northeast Quarter of the Northeast Quarter of Section 18, Township 3 South, Range 19 East of the Salt Lake Base and Meridian.

A copy of the Deed is attached to the Stipulation as Exhibit "B" (R-73,74 para. 3; see Appendix "B" to Appellant's Brief).

4. Plaintiff executed and delivered a Deed, dated October 16, 1950 and recorded October 30, 1950 as Entry No. 41585, Book A-7, page 469, by which Plaintiff conveyed to Ray Lavon Sprouse all her interest in the lands described above. The "Hayden Farm Land" tract description was erroneous in that the west course was

described as "160-2/3 rods" instead of 106-2/3 rods. A copy of the Deed is attached to the Stipulation as Exhibit "C" (R-74 para. 4; see Appendix "C" to Appellant's Brief).

5. Plaintiff executed and delivered a Quit Claim Deed dated and recorded March 31, 1954 in Book A-32, page 195, by which Plaintiff again conveyed to Ray Lavon Sprouse all her interest in the "Hayden Farm Land". This Deed corrects the error in the west course description. A copy of the Deed is attached to the Stipulation as Exhibit "D" (R-74 para. 5; see Appendix "D" to Appellant's Brief).

6. Plaintiff, Defendant Leora Sprouse, and Ray LaVon Sprouse executed an Oil, Gas & Mineral Lease (R-97; attached as Appendix "D" hereto) dated April 11, 1957, by which they purportedly granted an exploration and production lease to Standard Oil Company of California covering the Hayden Farm Land and other parcels (R-87,88 para. 1).

SUMMARY OF ARGUMENT

Plaintiff improperly raises issues on appeal which she did not present to the District Court. She now argues in Points I and II of her brief that there are material issues of fact which preclude the granting of summary judgment in favor of Defendant.

However, none of these purported issues were brought to the attention of the court below and they cannot be raised here.

Defendant moved for summary judgment, pursuant to U.R.C.P. Rule 56 (a copy of which is attached hereto as Appendix "E"), on the basis that Plaintiff's failure to reserve the disputed minerals in her conveyances to Ray Lavon Sprouse had the effect of reconveying them to him in fee simple. By doing so Defendant established a prima facie case that no material issue of fact existed. The burden then shifted to Plaintiff, under U.R.C.P. Rule 56(e), to set forth specific factual issues so as to preclude summary judgment. Plaintiff only responded with the argument that Defendant was barred from asserting her claim by reason of waiver which, as the District Court ruled, was untimely raised. With Plaintiff having failed to meet her burden of raising issues of material fact, the District Court properly ruled on the basis of the record before it that no such issues existed and that Defendant was entitled, as a matter of law, to a judgment in her favor. Plaintiff, on appeal, only asserts that issues of material fact existed and does not dispute the District Court's interpretation of the applicable law. However, because she did not raise those issues when she was required to do so, Plaintiff is barred from raising them on appeal and this Court should not consider them in its review.

ARGUMENT

I. Plaintiff failed to meet her burden of establishing issues of material fact to the District Court.

Plaintiff, for the basis of her appeal, now contends that at no time was summary judgment proper for disposition of this matter because the facts and circumstances surrounding the parties' exchange of deeds and their subsequent actions raise issues of material fact as to their intentions. Appellant's Brief, at page 5. Plaintiff further contends that she raised the defense of estoppel in her pleadings and therefore created an issue of fact so as to preclude summary judgment. Id. However, under U.R.C.P. Rule 56(e), Plaintiff failed to meet her burden of proving issues of material fact existed.

Summary judgment is proper "if the pleadings, dispositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." U.R.C.P. Rule 56(c). The United States Supreme Court, in a recent decision analyzing and interpreting F.R.C.P. Rule 56² in detail, stated:

²The language of F.R.C.P. Rule 56 parallels the language of U.R.C.P. Rule 56 verbatim.

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against the party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.

Celotex Corp. v. Catrett, ____ U.S. ____, ____, 106 S. Ct. 2548, 2552-2553, 91 L.Ed 2d 265, ____ (1986) (emphasis added). Based on the record before it, the District Court was "mandated" to grant summary judgment in favor of Defendant.

In Celotex, the plaintiff filed a wrongful death action alleging that her husband's death resulted from his exposure to asbestos products manufactured or distributed by Celotex. Celotex filed a motion for summary judgment, asserting that during discovery the plaintiff failed to produce any evidence to support her allegation that her husband had been exposed to Celotex products. The district court granted the motion but the court of appeals reversed, holding that summary judgment was precluded because of Celotex's failure to support its motion with evidence tending to negate such exposure. The Supreme Court reversed and remanded. In its discussion, the Supreme Court set forth the requirements which must be met by the parties when a motion for summary judgment is made.

The Supreme Court stated:

[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portion of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrates the absence of a genuine issue of material fact.

Id., at 2553. However, there is no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials negating the opponent's claim. Id. Here, Defendant met her burden of informing the district court.

Nearly two and one-half years after Plaintiff filed her complaint and after Plaintiff had certified that the case was ready for trial (R-49), Defendant moved for summary judgment on the basis that Plaintiff failed to reserve the disputed interest in her 1950 and 1954 conveyances to Ray Lavon Sprouse. "A fee simple title is presumed to pass by a conveyance of real estate, unless it appears from the conveyance that a lesser estate was intended." Utah Code Ann. § 57-1-3 (1953, as amended). Neither the 1950 deed nor the 1954 deed contain a reservation of the minerals nor do they contain any language which would indicate that a less-than-fee estate was intended. Therefore, the presumption arises that Plaintiff reconveyed all the minerals in fee simple. To overcome the presumption that the deeds conveyed

the entire fee simple title, Plaintiff had the burden of proving otherwise by clear and convincing evidence. Jacobson v. Jacobson, 557 P.2d 156, 158 (1976). Therefore, Defendant adequately identified to the District Court that Plaintiff had failed to establish an essential element of her case of which she would bear the burden of proof at trial; namely, that the minerals were not to be conveyed (a less-than-fee estate).

The burden then shifted to Plaintiff not only to rebut Defendant's fee simple title, but to come forth with specific issues of material fact so as to preclude the grant of summary judgment. U.R.C.P. Rule 56(e) provides, among other things that:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(emphasis added). See also, Thornock v. Cook, 604 P.2d 934, 936 (Utah 1979). Plaintiff's only response to the motion was to argue that the execution of the 1957 lease (R-97; attached as Appendix "D" hereto) "constitutes a clear and convincing waiver of any claim of Defendants to the 50% of mineral rights owned by Plaintiff and purportedly conveyed by the earlier deeds." (R-88). Regardless of the semantic games Plaintiff now attempts to play, this is an argument of waiver, not estoppel. The District Court

agreed and held that Plaintiff, having failed to raise the defense of waiver in her pleading, waived that defense (R-117 para. 2). Since Plaintiff could not rely on the allegations of her pleadings, she simply failed to prove her case at the point where she was required to do so. By failing to produce the evidence necessary to raise issues of material fact, Plaintiff risked the District Court's determination that none existed. Franklin Financial v. New Empire Development Co., 659 P.2d 1040, 1044 (Utah 1983). The District Court did indeed rule that no issues of material fact existed and, as is not disputed by Plaintiff on this appeal, properly ruled as a matter of law that Defendant was entitled to her quiet title decree. Simply put, Plaintiff had her "day in court", failed to prove her case, and lost.

II. Plaintiff is barred from raising issues of material fact on appeal.

As stated above, Plaintiff's whole basis for appeal is that at no point was summary judgment proper because issues of material fact existed. Specifically, Plaintiff alleges that the intention of the parties, as shown by their exchange of deeds and their subsequent actions, is an issue of material fact so as to preclude summary judgment. However, as shown above, Plaintiff failed to rebut Defendant's evidence of her fee title when she

was required to do so. Having failed to prove an element essential to her case, Plaintiff rendered all other facts immaterial. Celotex, at 2553.

As the record reflects, Plaintiff is raising the issues of intention or subsequent actions for the first time on appeal. She rested simply on her claim of waiver which was properly ignored by the District Court. Since these contentions are raised now for the first time on appeal, they must not be considered by this Court. Villeneuve v. Schamanek, 639 P.2d 214, 215 (Utah 1981); Corbet v. Corbet, 24 Utah 2d 378, ___, 472 P.2d 430, 433 (1970).

As to the Plaintiff's claim that she raised estoppel in her complaint (Point III of Appellant's Brief), she is again playing a game of semantics. Paragraph 13 of her complaint (R-3) states that "Defendants are estopped from denying the interest of Plaintiff in said mineral rights on the basis of laches". (emphasis added). Although Plaintiff uses the word "estoppel", it is clear that Plaintiff was asserting laches, not estoppel or waiver. Rule 8(c) of U.R.C.P. requires a party to "set forth affirmatively" the defenses of "estoppel, . . . laches, . . . waiver, and any other matter constituting an avoidance of [sic, or] affirmative defense." Plaintiff failed to raise waiver or estoppel in her pleading and therefore waived those defenses

pursuant to U.R.C.P. Rule 12(h)³. As to laches, the District Court properly ruled that Plaintiff cannot prevail in a quiet title action by relying on an alleged weakness in Defendant's title (R-117 para 1).

CONCLUSION

Plaintiff simply asks the Court for another chance even though she had her "day in court".

It is so patent as to hardly justify comment that a judgment should not be set aside merely to grant the losing party another chance to accomplish the task at which [s]he just failed This would involve not only a waste of time, energy, and expense but would result in such uncertainty as to people's rights that the very purpose of a law suit, the settling of disputes and putting them at rest, would be defeated.

³Rule 12(h) of U.R.C.P. provides:

A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received.

Haner v. Haner, 13 Utah 2d 299, _____, 373 P.2d 577, 579 (1962).
Accordingly, based on the foregoing, it is respectfully submitted
that the District Court's Summary Judgment be affirmed with costs
and other all relief as the Court deems just and equitable
awarded to Respondent.

Respectfully submitted this 14th day of July, 1987.

PRUITT, GUSHEE & FLETCHER

By: Thomas W. Bachtell
Thomas W. Bachtell

By: Frederick M. MacDonald
Frederick M. MacDonald

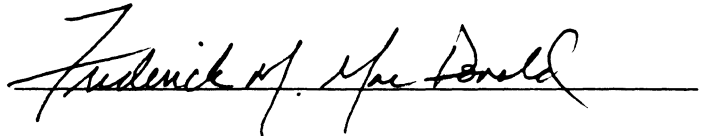
Attorneys for Respondent

CERTIFICATE OF MAILING

I hereby certify that I mailed four (4) true and correct copies of the foregoing Brief of Respondent Leora Sprouse on the 14th day of July, 1987 to the following:

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A handwritten signature in cursive script, reading "Frederick W. MacDonald", is written over a horizontal line.

COPY OF MEMORANDUM IN SUPPORT OF DEFENDANT LEORA SPROUSE'S
MOTION FOR SUMMARY JUDGMENT

Appendix "A"

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UINTAH COUNTY, UTAH

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

FLORENCE MAY OBERHANSKY,)	
)	
Plaintiff,)	
	)	MEMORANDUM IN SUPPORT OF
vs.	)	DEFENDANT LEORA SPROUSE'S
	)	MOTION FOR SUMMARY JUDGMENT
)	
LEORA SPROUSE, BOW VALLEY)	
PETROLEUM, INC., and THE	)	Civil No. 84-CV-89U
ESTATE OF RAY LAVON SPROUSE,)	
)	
Defendants.)	
)	

This is an action to quiet title to the mineral rights of certain parcels of real property located in Uintah County. Defendant Leora Sprouse has moved for Summary Judgment in her favor on the basis that her predecessor in interest received the disputed mineral rights from Plaintiff Florence Mae Oberhansly in fee simple. This Memorandum is in support of that Motion.

UNDISPUTED FACTS

Pursuant to a Stipulation of Facts ("Stipulation") signed by counsel for both parties and on file with this Court, the

following facts pertinent to the instant motion are not in dispute:

1. Plaintiff and Ray Lavon Sprouse were married in September, 1931, and later divorced pursuant to a Decree dated October 16, 1950. A copy of the Decree is attached to the Stipulation as Exhibit "A".

2. Defendant is the widow of Ray Lavon Sprouse and has succeeded to and is the current owner of his property.

3. Ray Lavon Sprouse executed and delivered a Deed, dated October 16, 1950 and recorded October 17, 1950 as Entry No. 41468, Book A-7, page 338, by which he purportedly conveyed to Plaintiff an undivided 50% interest in the oil, gas, coal, and other minerals laying in or under the following lands ("Subject Lands"):

HAYDEN FARM LAND

PARCEL No. 1: Beginning at the Northwest corner of the Northeast Quarter of Section 2, Township 1 South, Range 1 West, Uintah Special Meridian, and running thence East 106-2/3 rods; thence South 160 rods; thence West 106-2/3 rods; thence North 160 rods to the place of beginning, containing 106-2/3 acres and water shares that go with said parcel.

MOSLEY RANCH

PARCEL No. 2: Lots 1, 2 and 3 and the South half of the Northeast Quarter, and the North half of the Southeast Quarter, and the Southwest Quarter of the Southeast Quarter of Section 6, Township 3 South, Range 19 East of the Salt Lake Base and Meridian, containing 322.25 acres, more or less.

PARCEL No. 3: The West half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; the Northeast Quarter of the Southwest Quarter; the West half of the Northeast Quarter and the East half of the Northwest Quarter of Section 7, Township 3 South, Range 19 East, Salt Lake Base and Meridian and the Northeast Quarter of the Northeast Quarter of Section 18, Township 3 South, Range 19 East of the Salt Lake Base and Meridian.

A copy of the Deed is attached to the Stipulation as Exhibit "B".

4. Plaintiff executed and delivered a Deed, dated October 16, 1950 and recorded October 30, 1950 as Entry No. 41585, Book A-7, page 469, by which Plaintiff conveyed to Ray Lavon Sprouse all her interest in the lands described above. The "Hayden Farm Land" tract description was erroneous in that the west course was described as "160-2/3 rods" instead of 106-2/3 rods. A copy of the Deed is attached to the Stipulation as Exhibit "C".

5. Plaintiff executed and delivered a Quit Claim Deed dated and recorded March 31, 1954 in Book A-32, page 195, by which Plaintiff again conveyed to Ray Lavon Sprouse all her interest in the "Hayden Farm Land". This Deed corrects the error in the west course description. A copy of the Deed is attached to the Stipulation as Exhibit "D".

ARGUMENT

The Deeds executed by Plaintiff clearly and unambiguously conveyed all the mineral interest in the Subject Lands in fee simple.

Fee simple title is presumed to pass by a conveyance of real estate, unless it appears from the conveyance that a lesser estate was intended. Utah Code Ann. § 57-1-3 (1953). Neither the 1950 deed conveying all the Subject Lands nor the 1954 deed reconveying the Hayden Farm Land contains a reservation of the minerals. Neither deed contains any language which would indicate a less-than-fee estate was intended. Therefore, the presumption arises that Plaintiff conveyed all the minerals in fee simple.

In order to overcome the presumption that the deeds conveyed the entire fee simple title, the Plaintiff has the burden of proving otherwise by clear and convincing evidence. Jacobson v. Jacobson, 557 P.2d 156, 158 (Utah 1976). Because the deeds are clear and unambiguous, there remains nothing to effectuate the intention of the parties and parol evidence is inadmissible to vary the terms of the deeds. Hartman v. Potter, 596 P.2d 653, 656 (Utah 1979); Ash v. State of Utah, 572 P.2d 1374, 1379 (Utah 1977). Since neither deed reserves the mineral rights to the Subject Lands, Plaintiff cannot meet her burden.

Accordingly, it is respectfully submitted that Defendant's Motion for Summary Judgment against Plaintiff be granted and title to the disputed mineral rights be quieted in favor of Defendant.

Respectfully submitted this 5th day of January, 1987.

PRUITT, GUSHEE & FLETCHER

By: Thomas W. Bachtell
Thomas W. Bachtell

By: Frederick M. MacDonald
Frederick M. MacDonald

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum in Support of Defendant Leora Sprouse's Motion for Summary Judgment on the 5th day of January, 1987 to the following:

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Jaclyn Snowden

COPY OF MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Appendix "B"

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DISTRICT COURT
UINTAH COUNTY, UTAH

FEB 2 1987

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BY Thomson DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR
UINTAH COUNTY, STATE OF UTAH

FLORENCE MAE OBERHANSKY,	:	
Plaintiff,	:	PLAINTIFF'S MEMORANDUM
vs.	:	IN SUPPORT OF MOTION
	:	FOR SUMMARY JUDGMENT
LEORA SPROUSE, BOW VALLEY	:	AND IN OPPOSITION TO
PETROLEUM, INC., and THE	:	DEFENDANT'S MOTION
ESTATE OF RAY LAVON SPROUSE,	:	FOR SUMMARY JUDGMENT
Defendants.	:	Civil No. 84-CV-89 ⁽¹⁾ 1

This is an action based on a Complaint and Counterclaim each seeking to quiet title in mineral rights of certain parcels of real property located in Uintah County. Plaintiff and Defendants have filed Motions for Summary Judgment based upon a Stipulation of Facts on file herein. This Memorandum is respectfully submitted in support of Plaintiff's Motion and in Opposition to Defendant's Motion.

UNDISPUTED FACTS

Defendant's Memorandum correctly recites the facts as stipulated with the exception of the following:

1. Plaintiff, Defendant Leora Sprouse, and Ray LaVon Sprouse executed an Oil, Gas & Mineral Lease dated April 11, 1957, by which they purportedly granted an exploration and

production lease to Standard Oil Company of California covering the Hayden Farm Land and other parcels.

ARGUMENT

1. DEFENDANTS ARE ESTOPPED TO DENY THE MINERAL INTERESTS OF PLAINTIFF.

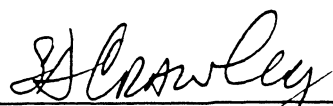
The execution of the Oil, Gas & Mineral Lease of April 11, 1957, constitutes a clear and convincing waiver of any claim of Defendants to the 50% of mineral rights owned by Plaintiff and purportedly conveyed by the earlier deeds. The execution of the Lease by Defendant Sprouse and Ray LaVon Sprouse is inconsistent with an intention to insist on enforcing a claim to 100% of the now disputed mineral rights and warrants an inference of relinquishment of such right, if it was ever claimed by Defendants.

The voluntary conduct of Defendants estops and absolutely precludes them from asserting rights which might have otherwise existed as against Plaintiff who in good faith relied on said contract and had no reason to know or believe that she was not the undisputed owner of 50% of the subject mineral rights.

Defendant's Motion for Summary Judgment should be denied and Plaintiff's Motion for Summary Judgment should be granted.

DATED this 29th day of January, 1987.

WALSTAD & BABCOCK

By: 
Steven D. Crawley
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Plaintiff's Memorandum in Support of Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment, this 29th day of January, 1987, postage prepaid, to Frederick M. MacDonald, Pruitt, Guslee, & Fletcher, 1850 Beneficial Life Tower, 36 South State, Salt Lake City, Utah 84111, and to Richard B. Johns, Jones, Waldo, Holbrook & McDonough, 1500 First Interstate Plaza, 170 South Main Street, Salt Lake City, Utah 84101.

Carla R. Dimick

10-10-obermemo

COPY OF REPLY MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT AND MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Appendix "C"

FILED
DISTRICT COURT
UINTAH COUNTY, UTAH

FEB 4 1987

DOROTHY LUCK, CLERK

BY T. L. L. L. DEPUTY

THOMAS W. BACHTELL, #0162
FREDERICK M. MacDONALD, #4876
PRUITT, GUSHEE & FLETCHER
1850 Beneficial Life Tower
Salt Lake City, Utah 84111
Telephone: (801) 531-8446
Attorneys for Defendants Leora Sprouse and
the Estate of Ray LaVon Sprouse

IN THE SEVENTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

FLORENCE MAY OBERHANSKY,)	
)	
Plaintiff,	)	REPLY MEMORANDUM IN SUPPORT
	)	OF DEFENDANT'S MOTION FOR
vs.	)	SUMMARY JUDGMENT AND
	)	MEMORANDUM IN OPPOSITION
LEORA SPROUSE, BOW VALLEY	)	TO PLAINTIFF'S MOTION FOR
PETROLEUM, INC., and THE	)	SUMMARY JUDGMENT
ESTATE OF RAY LAVON SPROUSE,)	
	)	Civil No. 84-CV-89U
Defendants.)	
)	

This matter is before the Court on Cross-Motions for Summary Judgment filed by Defendant on January 5, 1987 and by Plaintiff on January 29, 1987. Defendant claims title in fee simple to the disputed mineral interest based on Plaintiff's failure to reserve the minerals in her conveyances. Plaintiff, in her Memorandum in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiff's Motion for Summary Judgment ("Plaintiff's Memorandum"), asserts only that Defendant is estopped from asserting her claim by reason of the doctrine of waiver. Defendant submits this Memorandum in reply to Plaintiff's

unequivocally shows an intent to waive their undivided fee simple title to the subject mineral interest.

Oil companies often require parties with even a remote claim of interest to sign a lease. Doing so protects their leasehold ownership and rights from being the center of litigation. They simply let the signatories fight it out over royalty entitlement. This action is a perfect example of this practice. Thus, just because an oil company may require a person's signature, it does not confirm any interest in the signatory, nor does it establish that other signatories recognize that interest.

This is further evidenced by the "Proportionate Reduction Clause" of the subject lease (see Paragraph 15 of Exhibit "A" attached hereto and by this reference incorporated herein). This clause contemplates the situation where a signatory has a reduced or no interest in the minerals covered by the lease. By signing the same lease as the Plaintiff¹, Defendant and Ray LaVon Sprouse hardly did an act which was inconsistent with their claim of 100% title. Nor can their signature constitute a relinquishment of 50% of the mineral ownership since the lease does not convey or distribute any interest among the various signatories. Plaintiff simply does not own an interest and her signing of the lease did

¹It should be noted that Plaintiff's signature was notarized some four months after Defendant and Ray LaVon Sprouse signed the Lease (see pages 7 and 12 of Exhibit "A").

not grant her any interest. Therefore, as a matter of law, Plaintiff has failed to show the requisite distinct and unequivocal intent necessary to invoke the defense of waiver.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that Defendant's Motion for Summary Judgment against Plaintiff should be granted and Plaintiff's Motion for Summary Judgment should be denied.

Respectfully submitted this 3rd day of February, 1987.

PRUITT, GUSHEE & FLETCHER

By: Frederick M. MacDonald
Frederick M. MacDonald

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing document for Defendant on the 3rd day of February, 1987 to the following:

Steven D. Crawley, Esq.
Attorney for Plaintiff
Walstad & Babcock
185 South State, Suite 1000
Salt Lake City, UT 84117
Telephone: (801) 531-7000

Jaclyn Snowden

COPY OF OIL AND GAS LEASE DATED APRIL 11, 1957

Appendix "D"

ORIGINAL

COMMERCIAL COMM. FORM (2-1-58)

OIL, GAS AND MINERAL LEASE

THIS AGREEMENT, dated 11th day of April, 19 57,
between the undersigned several owners, parties of the first part, hereinafter styled "Lessors," and STANDARD OIL COM
PANY OF CALIFORNIA, a corporation, party of the second part, hereinafter styled "Lessee,"

WITNESSETH:

1. This lease includes those lands in the County of Utah
State of Utah within an area described as follows:
the owners of which lands (hereinafter referred to as "said land") have executed this agreement.

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 2: All

Section 3: East 1/4 Rods E 1/4

2. Lessors, for and in consideration of the sum of One Dollar, to each of them in hand paid, and of other valuable considerations, the receipt of all of which is hereby acknowledged, do hereby agree with each other and with Lessee to, and they do hereby, lease, let, and demise unto Lessee said land with the sole and exclusive right to Lessee for the purpose of investigating, exploring, drilling, and mining for, producing, saving, taking, owning, transporting, storing, handling, and treating oil, gas, hydrocarbons or minerals whether similar or dissimilar, together with all rights, privileges, and easements useful or convenient for Lessee's operations hereunder on said land and on lands in the same field, including, but not limited to, the following rights: to lay pipe lines, to build roads, and to construct tanks, pump and power stations, power and communication lines, and other structures and facilities, and Lessee hereby leases said lands from Lessors for the purposes and uses aforesaid and with the rights herein set forth.

3. Lessors agree to, and they do hereby, pool their interests in this lease, and do further agree that during the continuance of this lease each owner of land subject thereto shall share in all benefits accruing to the whole lease in the ratio which the acreage owned by such Lessor bears to the entire acreage hereby leased. This provision as to apportionment of benefits shall be operative, notwithstanding the surrender or forfeiture by Lessee of any land described herein, provided, however, upon surrender or other termination of all lands included in this lease, the pooling of the lands included in this lease shall terminate and thenceforth no owner of any part of the lands included in this lease shall, by reason of said pooling, have any right, title or interest in any other part of the lands included in this lease.

4. Subject to the other provisions herein contained, this lease shall remain in force for a period of ten (10) years from the date hereof, hereinafter called "primary term," and so long thereafter as oil, gas, hydrocarbons or minerals, or any one or more of them, is produced from said land hereunder, or Lessee is engaged in drilling, mining or reworking operations on said land hereunder.

5. Royalties to be paid by Lessee are: (a) on oil, twelve and one half per cent (12 1/2%) of that produced and saved from said lands, to be delivered at the wells or to the credit of Lessors into the pipe line to which the wells may be connected; Lessee may from time to time purchase any royalty oil, paying therefor the market value in the field where produced on the day it is run to the pipe line or storage tanks; (b) on gas, including casinghead gas or other gaseous substance, produced from said land and sold or used, the market value at the well of twelve and one-half per cent (12 1/2%) of the gas so sold or used, provided that on gas sold at the well the royalty shall be twelve and one-half per cent (12 1/2%) of the amount realized from such sales; (c) on sulphur, one dollar (\$1.00) per long ton mined and marketed; (d) on all other minerals, eight per cent (8%) of that mined or marketed in kind or value at the well or mine, at Lessee's election. If Lessee shall discover gas hereunder on said lands or on land unitized with any of said land, Lessee may at any time or times during or after the primary term and at Lessee's election, pay Lessors as royalty a sum equal to the rental hereinafter provided on the acreage then held by Lessee hereunder, whereupon it shall be considered for all purposes of this lease that gas is being produced hereunder from said land for a period of one year: such year to commence on the anniversary of this lease next preceding such payment, unless the rental, if any, which accrued on such anniversary was paid, in which event such year shall commence on the anniversary of this lease next following such payment. Any such payment may be made in the same manner as provided elsewhere in this lease for the payment of rental, and shall be in lieu of the rental covering the same period of time; but shall not be in lieu of any royalty based on actual production. Lessee may use, free of royalty, oil, gas, coal, and water developed from said land by Lessee, for all operations hereunder.

6. Lessee shall have the right hereunder to conduct operations by methods now known or unknown for the purpose of benefiting or facilitating the drilling for, or production of, oil, gas, hydrocarbons or minerals by or through a well or wells on said land, together with the right to drill wells or use existing wells for the purpose of injecting into said land oil, gas, water or other hydrocarbons or minerals produced from said land or other lands. When such oil, gas, hydrocarbons or minerals are used for the above-mentioned operations, the initial production of oil, gas, hydrocarbons or minerals from such well or wells shall be royalty-free until the amount or, at Lessee's option, the value, of the oil, gas or other substances produced and saved from such well or wells, shall equal that of the oil, gas, hydrocarbons or minerals so used or injected therein. After such full recovery, the production thereafter shall be considered to be the true production from said well or wells upon which the

royalty hereinafter specified shall be based. Lessee shall not be required to account to Lessors for, or pay rental or royalty on, oil, gas, hydrocarbons or minerals or water produced from said land or other lands and used for operations under this lease, including operations on said land or adjacent lands for the foregoing purposes. Water produced by Lessee may, if and while the same is not used by it in its operations hereunder, be used by the Lessor of the particular parcel of land upon which said water is produced for surface operations on said parcel of land.

7. The royalty aforesaid shall be ascertained, computed and paid monthly, and Lessee shall keep true and correct books of account showing the amount of oil, gas, hydrocarbons or minerals produced, saved and removed from said land. Lessee shall furnish to Lessors monthly written statements of the production run from said land during the preceding calendar month, and settlement thereof shall be made between the parties hereto as herein provided. Royalties payable in money with respect to production run from said land during any calendar month may be paid not later than the last day of the next succeeding calendar month; provided further, that if, at any settlement date, the amount payable to any Lessor for royalties hereunder shall be less than Ten Dollars (\$10.00), Lessee may withhold payment until the amount payable to such party equals or exceeds the sum of Ten Dollars (\$10.00), in which event payment shall be made at the next regular settlement date; provided, however, that in any event, all sums theretofore accrued and unpaid during any calendar year shall be paid not later than January 31 of the succeeding calendar year.

8. Lessee agrees to commence drilling operations on said land within the period of Ten years from the date hereof (which period is hereinafter referred to as "primary term") and to prosecute such drilling operations with reasonable diligence until oil or gas is found in quantities deemed paying quantities by Lessee, or until further drilling operations would, in the judgment of Lessee, be unprofitable or impracticable, or it may at any time within said primary term terminate this lease and surrender said land; provided that, commencing with the 11th day of April, 19 58, if Lessee has not theretofore commenced drilling operations on said land or terminated this lease, Lessee shall pay or tender to Lessors, Annually, in advance, as rental, the sum of ONE AND NO/100 Dollars (\$1.00) per acre for each acre then subject to this lease, (each of such Annual periods being hereinafter referred to as "rental period") until drilling operations are commenced on said land or this lease terminated as herein provided; it being understood that in the event of the surrender or termination of this lease as to any portion or portions of the land covered thereby, said rental shall be reduced proportionally as provided in Paragraph 17 hereof. The consideration expressed herein covers all rental for the first Year of the term hereof. If the Lessee shall elect not to commence drilling operations on said land during the primary term, as above provided, this lease shall terminate.

9. If at any time or times after the primary term or within three (3) months before expiration of the primary term, all operations and all production hereunder shall cease for any cause, this lease shall not terminate if Lessee shall commence or resume drilling, mining or reworking operations or the production of any oil, gas, hydrocarbons or minerals within three (3) months after such cessation.

10. Lessee shall pay the party or parties entitled thereto for damages caused by Lessee's operations to houses, barns, growing crops, and fences. No well shall be drilled closer than two hundred (200) feet to any residence or barn now on said land without the written consent of Lessors of the particular parcel of land upon which such buildings are located. Lessee shall have the right at any time to remove all Lessee's property and fixtures, including the right to draw and remove all casings. Lessee shall drill any well which a reasonably prudent operator would drill under the same or similar circumstances to prevent substantial drainage from said lands by wells located on adjoining land not owned by Lessors, when such drainage is not compensated by counter drainage. No default of Lessee hereunder with respect to any well, mine or portion of this lease shall impair Lessee's rights with respect to any other well, mine or portion of this lease. Lessee agrees to operate all completed oil wells on said land in accordance with accepted oil field practice and agrees to develop said land in accordance with the well spacing pattern adopted by Lessee in the general area of which said land is a part.

11. The rights of Lessors and Lessee hereunder may be assigned in whole or in part. No present or future division of Lessor's ownership as to different portions or parcels of land shall operate to enlarge the obligations or diminish the rights of Lessee, and Lessee's operations may be conducted without regard to any such division. If all or any part of this lease is assigned, no leasehold owner shall be liable for any act or omission of any other leasehold owner, and failure by one to pay rental shall not affect the rights of others—rental being apportionable in proportion to acreage.

12. Whenever, as a result of any cause beyond Lessee's control (such as fire, flood, windstorm or other Act of God; law, order or regulation of any governmental agency; or inability to secure labor, material or transportation) Lessee is prevented or hindered from complying with any obligation of this lease, Lessee shall not be liable for damages or forfeiture of this lease and Lessee's obligations shall be suspended so long as such cause persists. If for any cause all operations and all production hereunder are prevented or hindered after the expiration of the primary term, Lessee may at any time or times and at Lessee's election pay Lessors as royalty (in addition to any royalties based on actual production) a sum equal to one-fourth (1/4) of the rental hereinabove provided on the acreage then held by Lessee hereunder, whereupon it shall be considered for all purposes of this lease that oil, gas, hydrocarbons or minerals are being produced hereunder for a period of three months from the date such payment is made. Any such payment may be made in the same manner as provided elsewhere in this lease for the payment of rental.

13. Lessee may at any time or times unitize this lease, and the lands covered hereby, in whole or in part, or as to any stratum or strata, with other lands and leases in the same field, so as to constitute a unit or units, whenever such action, in Lessee's judgment, is required to promote or encourage the conservation of natural resources by facilitating an orderly or uniform well spacing pattern; a cycling, pressure-maintenance, repressuring or secondary recovery program; or any cooperative or unit plan of development or operation approved by State or Federal authorities. The size of any such unit may be increased by including acreage believed to be productive, and decreased by excluding acreage believed to be unproductive, or the owners of which fail or refuse to join the unit, but any increase or decrease in Lessors' royalties resulting from any such change in any such unit, shall not be retroactive. Any such unit may be established, enlarged, or diminished, and, in the absence of production therefrom, may be abolished and dissolved, by filing for record an instrument so declaring, a copy of which shall be delivered to Lessors or to the depository. Drilling, mining or reworking operations upon, or production of oil,

gas, hydrocarbons or minerals from any part of such unit shall be treated and considered, for all purposes of this lease, as such operations upon or such production from this lease. Lessee shall allocate to the portion of this lease included in any such unit a fractional part of all production from any part of such unit, on one of the following basis: (a) the ratio between the participating acreage in this lease included in such unit and the total of all participating acreage included in such unit; or (b) the ratio between the quantity of recoverable production underlying the portion of this lease included in such unit and the total of all recoverable production underlying such unit; or (c) any other basis approved by State or Federal authorities having jurisdiction thereof. Upon production from any part of such unit, Lessors herein shall be entitled to the royalties in this lease provided, on the fractional part of the unit production so allocated to that portion of this lease included in such unit, and no more. The provisions of this paragraph authorizing the establishment and enlargement of such unit and change in the ratio of participation thereunder shall not extend beyond the period of twenty-one (21) years from the date of this lease; provided, however, that if such unit is established before the expiration of said twenty-one year period, such unit may continue in effect beyond said twenty-one year period.

14. Lessee shall pay all royalties, rentals and other payments payable in money hereunder by mailing or delivering a check therefor to the depository hereinafter designated, or at Lessee's option, by mailing a check therefor to each of the Lessors in accordance with his respective interest therein at the address designated by such Lessor for such payments, and the mailing of any such check to such address shall, for all purposes of this lease, constitute payment to such Lessor; and for such purpose each of the Lessors hereby designates, effective until such time as he shall designate a different address by written notice to Lessee at its office in San Francisco, California, the address hereinafter set forth at the end of this lease.

Lessors hereby designate as such depository First Security Bank of Utah, N.A., Roosevelt Branch

at Roosevelt, Utah, its successors and assigns, hereby granting to said depository full power and authority in the name of each and every one of Lessors and the heirs, executors, administrators, successors and assigns of Lessors, and each of them, to collect and receipt for all sums of money due and payable from Lessee to Lessors hereunder, or any of them, and to settle all accounts and accounting of rentals, royalties and other payments payable in money hereunder. The designation of the depository above named shall continue in effect until the owners and holders of at least two-thirds of Lessors' estate in said lands shall in writing designate a different depository and notify Lessee in writing at its office in San Francisco, California, of the name and address of such new depository. The payment of any and all rentals, royalties and other payments hereunder by Lessee to the depository designated herein or to any other depository hereafter designated by Lessors, as aforesaid, shall be a full acquittance and discharge of Lessee of and from any and all liability to Lessors, or any of them, and to the heirs, executors, administrators, successors and assigns of Lessors, and each of them for any part of such rentals, royalties or other payments, and Lessee will not be responsible at any time for the disposition or disbursement of any such depository of all or any part of any moneys received by it hereunder. No change in the ownership of the land or the minerals covered by this lease and no assignment of rentals or royalties shall be binding upon Lessee or the depository until the depository has been furnished at the above address and Lessee has been furnished at its office in San Francisco, California, with written notice thereof and with evidence thereof satisfactory to them, which notice shall designate in writing the address to which checks covering payments affected by such change shall be mailed as hereinabove provided. In the event that any assignee or transferee of such interest shall fail to designate an address as aforesaid, Lessee may withhold such payments so accruing to such interest until such assignee or transferee has designated an address. In the event of any dispute or uncertainty, in Lessee's opinion, as to the party or parties entitled to receive any such payment, or any part thereof, Lessee may, without incurring any liability of any kind or character, withhold payment of any amount as to which such dispute or uncertainty exists, pending the determination of such dispute or uncertainty, or may interplead the claimants, and thereupon the payment into court by Lessee of any such amount or amounts shall be deemed a compliance with the provisions of this lease with respect to such payment.

15. It is agreed that if Lessors own a less interest in the oil, gas, hydrocarbons or minerals in said land, than the entire and undivided fee simple estate therein, then any royalties, rentals and other payments herein provided for shall be paid Lessors only in the proportion which Lessors' interest bears to the whole and undivided fee. In the event Lessee's estate hereunder shall fail, for a cause other than Lessee's fault hereunder, in regard to any portion of said land or any interest therein, such failure shall not affect or invalidate Lessee's estate hereunder in regard to the remaining portions of said lands or the remaining interests therein and this lease shall nevertheless continue in full force and effect with respect to said remaining portions of said land or remaining interests therein, and Lessee shall not be accountable to any of Lessors for any payment theretofore made with respect to said portion of said land or such interest in regard to which Lessee's estate hereunder has failed. If and whenever it shall be necessary so to do in order to protect Lessee's interest under this lease, Lessee may at its option pay and discharge at any time any mortgage or other lien now or hereafter attaching to said land or any part thereof and in such event Lessee shall be subrogated to all of the rights of the owner or holder of such mortgage or other lien and Lessee may in addition thereto, at its option, apply to the discharge of any such mortgage or other lien, or to the reimbursement to Lessee for any amount so paid by it, any rentals, royalties or other sums accruing or payable hereunder, to the owner of the lands to which such mortgage or other lien attaches.

16. If Lessee shall fail to pay any installment of royalty or rental when due and if such default shall continue for a period of fifteen days after receipt by Lessee of written notice thereof from Lessors to Lessee, then at the option of Lessors, this lease shall terminate as to the portion or portions thereof as to which Lessee is in default; provided, however, that if there be a bona fide dispute as to the amount due and all undisputed amounts are paid, said fifteen-day period shall be extended until five days after such dispute is settled by final court decree, arbitration or agreement.

17. Lessee may at any time or times surrender this lease as to all or any portion of said land by delivering to Lessors or to the depository bank or by filing for record a release or releases, and be relieved of all obligations thereafter accruing as to the acreage surrendered, and thereafter the rental shall be reduced in the same proportion that the acreage covered hereby is reduced. In the event this lease shall be surrendered under the provisions of this paragraph, or assigned as hereinabove provided as to any portion or portions of said land, then so long as this lease shall remain in effect as to any portion or portions of said land, Lessee shall have such rights of way or easements hereunder, over, upon and across the land as to which this lease is so surrendered or assigned as shall be necessary or convenient for Lessee's operations on the land retained by it and other lands in the vicinity thereof. Upon any surrender or assignment of this lease as to all or any portion of said land, Lessee shall be relieved of all further obligations hereunder with respect to the lands so surrendered or assigned. Such surrender shall become effective upon delivery to Lessors, or to the depository bank herein designated, or the deposit in the United States Mail, postage prepaid, of a duly executed duplicate of an instrument of surrender. Within a reasonable time thereafter, Lessee shall record the original of such instrument of surrender.

18. The benefits of each Lessor under this lease, including rent and royalty accruing hereunder from the entire demised premises, are appurtenant to the land of such Lessor included in this lease, and any transferee or subsequent owner of the title to the land of any Lessors shall, as between the parties to this lease, their successors or assigns, be entitled to receive such appurtenant benefits under this lease except to the extent that such benefits shall be expressly reserved or shall have been theretofore transferred in whole or in part.

19. It is understood that no Lessor herein is conveying to any other Lessor any interest in any of the oil, gas, hydrocarbons or minerals in, on or under the parcel of land owned by such Lessors, and herein described, and that no Lessor has, or will have, any interest in such substances, in place, under the land of any other Lessor. It is further understood that the only interest acquired by any Lessor hereunder in any of said substances is the right to his, her or their proportionate part of said substances hereinbefore described as and when they shall have been removed from the lands subject to this community oil and gas lease and/or in and to the value of such products or substances as and when sold, for which provision is herein made. It is further understood that the surrender and termination of this lease by Lessee as to all lands subject to this community oil and gas lease shall sever any interest which any Lessor may be deemed to have had in any of said substances and products or in the land of the other Lessors, and that no Lessor herein named shall thereafter have any interest therein.

20. The provisions of this lease shall be binding upon and shall inure to the benefits of the respective heirs, executors, administrators, successors and assigns of the parties hereto.

21. This agreement may be executed in any number of counterparts with the same force and effect as if all parties had signed the same document.

IN WITNESS WHEREOF, the undersigned owners and the Lessee have executed this agreement.

STANDARD OIL COMPANY OF CALIFORNIA
By STANDARD OIL COMPANY OF CALIFORNIA WESTERN OPERATIONS, INC.
Its Authorized Agent

By

Contract Agent

By

Assistant Secretary

LESSEE



22. Notwithstanding anything to the contrary herein contained, it is understood by the parties hereto that this Lease does not include any minerals other than oil, gas or other hydrocarbon substances, and all provisions in this Lease with a reference to minerals, for whatever purpose made, are to be read as though such reference were deleted excepting oil, gas or other hydrocarbon substances.

CITY AND COUNTY OF SAN FRANCISCO } ss.

On this day of, 195

before me.....

personally appeared.....

known to me to be the Contract Agent and Assistant Secretary, respectively, of Standard Oil Company of California, the Corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal, the day and year first above written.

Notary Public in and for said City and County of San Francisco,
State of California

STATE OF CALIFORNIA)
County of _____) ss.

On this _____ day of _____, A. D. 19____, before me,
_____, a Notary Public in and for
the _____ County of _____, State of California,
residing therein, duly commissioned and sworn, personally appeared _____,

known to me to be the _____
of the corporation described in and that executed the within instrument, and also known to me
to be the person _____ who executed the within instrument on behalf of the corporation therein
named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, in the
_____ County of _____, the day and year in this certificate first above
written.

Notary Public in and for the _____
County of _____, State of California

My Commission Expires:
_____, 19____.

STATE OF CALIFORNIA)
County of _____) ss.

On this _____ day of _____, A. D. 19____, before me,
_____, a Notary Public in and for
said County and State, personally appeared _____,

known to me to be the person _____ whose name _____ subscribed to the within instrument,
and acknowledged to me that _____ he _____ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day
and year in this certificate first above written.

Notary Public in and for said County and State

My Commission Expires:
_____, 19____.

STATE OF CALIFORNIA)
City and County of San Francisco) ss.

On this 21st day of November, in the year 1957, before
me, George E. Lempert, a Notary Public in and for said City and County and
State, residing therein, duly commissioned and sworn, personally appeared _____

known to me to be the Contract Agent and Assistant Secretary, respectively, of Standard Oil
Company of California, Western Operations, Inc., and known to me to be the persons who
executed the within instrument on behalf of said Standard Oil Company of California, Western
Operations, Inc., the corporation that executed and whose name is subscribed to the within
instrument as the Attorney in Fact of Standard Oil Company of California, and acknowledged
to me that they subscribed the name of Standard Oil Company of California thereto as principal
and the name of Standard Oil Company of California, Western Operations, Inc. as Attorney in
Fact for said Standard Oil Company of California and that said Standard Oil Company of
California, Western Operations, Inc. executed the same as such Attorney in Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my
office in the City and County and State aforesaid the day and year in this certificate above
written.

George E. Lempert
Notary Public in and for said City and County of
San Francisco, State of California

My Commission Expires:
Jan 23, 1960.

CHARLES ORRIN GARDNER + LAURA M. GARDNER, his wife

340

All that certain real property situated in the County of UTAH, State of UTAH, being a portion of the lands described in Paragraph 1 of the foregoing oil and gas lease from the undersigned and others, as Lessors, to Standard Oil Company of California, as Lessee, dated APRIL 11, 1957, described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 2: Beginning at the Northeast corner of Section; thence South 160 Rods, thence West 53-1/3 Rods; thence North 160 Rods; thence East 53-1/3 Rods to beginning.

together with all right, title and interest which the undersigned may now have or hereafter acquire in the real property included in any alleys, roads or streets adjacent to the above-described premises.

ADDRESS

LESSOR

NEOLA
Hogden, Utah

Charles Orrin Gardner
CHARLES ORRIN GARDNER

Laura M. Gardner
LAURA M. GARDNER

STATE OF UTAH) ss.
County of WINTAH

On this 22ND day of AUGUST, A.D. 1957 before me
appeared CHARLES ORRIN GARDNER AND LAURA M. GARDNER,
known to me to be the persons whose names ARE subscribed to the within instrument, and acknowledged to me
that They executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

My Commission Expires:

May 1, 1960.

Marion R. Bowman
Notary Public in and for said County and State
Residing at Paradise, Utah

FLORENCE J. OBERHANSKY, a married woman, as her sole and separate property.
RAY LA VON SPROUSE and LEORA SPROUSE, husband and wife

All that certain real property situated in the County of UTAH,
State of UTAH, being a portion of the lands described in Paragraph 1 of the foregoing
oil and gas lease from the undersigned and others, as Lessors, to Standard Oil Company of California,
as Lessee, dated APRIL 11, 1957, described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 2: Beginning at $\frac{1}{2}$ corner of Section - thence
East 106-2/3 rods; thence South 160 rods;
thence West 106-2/3 rods; thence North 160
rods to beginning.

together with all right, title and interest which the undersigned may now have or hereafter acquire in
the real property included in any alleys, roads or streets adjacent to the above-described premises.

ADDRESS

LESSOR

LaPoint, Utah
Curay

Ray La Von Sprouse
RAY LA VON SPROUSE

Leora Sprouse
LEORA SPROUSE

Hayden, Utah

Florence J. Oberhansky
FLORENCE J. OBERHANSKY

STATE OF UTAH)
County of Duchesne) ss.

On this 24 day of APRIL, A.D. 1957 before me
Keith Dale Cummings, a Notary Public in and for said County and State, personally
appeared RAY LA VON SPROUSE and LEORA SPROUSE,
known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me
that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

My Commission Expires:

20 Feb, 1961

Keith Dale Cummings
Notary Public in and for said County and State

Residing at Paria, Utah

HORACE ALLRED and RUBY ALLRED, husband and wife

347

All that certain real property situated in the County of UTAH,
State of UTAH, being a portion of the lands described in Paragraph 1 of the foregoing
oil and gas lease from the undersigned and others, as Lessors, to Standard Oil Company of California,
as Lessee, dated APRIL 11, 1957, described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 2: Lot 3, ~~SE 1/4~~, and Beginning at Southeast corner
Lot 4 - thence West 19 rods; thence North $88\frac{1}{2}$ rods
more or less to North line Lot 4; thence East 19
rods; thence South $88\frac{1}{2}$ rods more or less to beginning.

Beginning Southwest corner of said Lot 4 - thence
East 61 rods; thence North 1 rod; thence West 61 rods;
thence South 1 rod to beginning.

together with all right, title and interest which the undersigned may now have or hereafter acquire in
the real property included in any alleys, roads or streets adjacent to the above-described premises.

ADDRESS

LESSOR

Roosevelt, Utah

Horace Allred
HORACE ALLRED

Ruby Allred
RUBY ALLRED

STATE OF UTAH)
County of DEWHINE) ss.

On this 30 day of April, A.D. 1957, before me
Keith Dale Cummings, a Notary Public in and for said County and State, personally
appeared HORACE ALLRED and RUBY ALLRED,
known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me
that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

My Commission Expires:

20 Feb, 1961.

Keith Dale Cummings
Notary Public in and for said County and State

Residing at Roosevelt, Utah

EIROY HALVERSON and ESTHER HALVERSON, husband and wife

348

All that certain real property situated in the County of UINTAH,
State of UTAH, being a portion of the lands described in Paragraph 1 of the foregoing
oil and gas lease from the undersigned and others, as Lessors, to Standard Oil Company of California,
as Lessee, dated APRIL 11, 1957, described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 2: SW $\frac{1}{4}$ NW $\frac{1}{4}$, all of Blocks 14 & 15
Hayden Townsite.

together with all right, title and interest which the undersigned may now have or hereafter acquire in
the real property included in any alleys, roads or streets adjacent to the above-described premises.

ADDRESS

LESSOR

RT #2 - Roosevelt, UTAH
Hayden, Utah

Eiroy Halversen
EIROY HALVERSON
Esther Halversen
ESTHER HALVERSON

STATE OF Utah)
County of Duchesne) ss.

On this 2nd day of May, A.D. 1957 before me
Keith Dale Cummings, a Notary Public in and for said County and State, personally
appeared Eiroy Halversen and Esther Halversen, his wife
known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me
that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

My Commission Expires:

21 Feb, 1961

Keith Dale Cummings
Notary Public in and for said County and State

Residing at Beirut, Utah

MARK L. OBERHANSLY

All that certain real property situated in the County of UINTAH,
State of UTAH, being a portion of the lands described in Paragraph 1 of the foregoing
oil and gas lease from the undersigned and others, as Lessors, to Standard Oil Company of California,
as Lessee, dated APRIL 11, 1957, described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 2: Beginning Southwest corner ~~N¹/₄SW¹/₄~~ - thence North
78 rods; thence East 82 rods; thence South 78
rods; thence West 82 rods to beginning. AND ALSO
SE ¹/₄ SW ¹/₄, E ¹/₂ SW ¹/₄ SW ¹/₄

together with all right, title and interest which the undersigned may now have or hereafter acquire in
the real property included in any alleys, roads or streets adjacent to the above-described premises.

ADDRESS

LESSOR

Hayden, Utah

MARK L. OBERHANSLY

STATE OF _____)
County of _____) ss.

On this _____ day of _____, A.D. 19____, before me
_____, a Notary Public in and for said County and State, personally
appeared _____,
known to me to be the person whose name _____ subscribed to the within instrument, and acknowledged to me
that _____ he _____ executed the same.

IN WITNESS WHEREOF. I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

My Commission Expires:

Notary Public in and for said County and State

Residing at _____

SADIE BLANK
GUY BURTON and NANCY BURTON, husband and wife

All that certain real property situated in the County of UTAH,
State of UTAH, being a portion of the lands described in Paragraph 1 of the foregoing
oil and gas lease from the undersigned and others, as Lessors, to Standard Oil Company of California,
as Lessee, dated APRIL 11, 1957, described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 2: SE

together with all right, title and interest which the undersigned may now have or hereafter acquire in
the real property included in any alleys, roads or streets adjacent to the above-described premises.

ADDRESS

LESSOR

Neola, Utah

SADIE BLANK

Whiterocks, Utah

GUY BURTON

NANCY BURTON

STATE OF UTAH)
County of TCUE) ss.

On this 3rd day of MAY, A.D. 1957 before me
appeared Guy BURTON and NANCY BURTON, a Notary Public in and for said County and State, personally
known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me
that they executed the same.

IN WITNESS WHEREOF. I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

My Commission Expires:

Robert O. Johnson
Notary Public in and for said County and State

Residing at Blanchett, Utah

FLORENCE J. OBERHANSKY, a married woman, as her sole and separate property.

All that certain real property situated in the County of Utah,
State of Utah, being a portion of the lands described in Paragraph 1 of the foregoing
oil and gas lease from the undersigned and others, as Lessors, to Standard Oil Company of California,
as Lessee, dated April 11, 1957, described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 2: All of Blocks 2, 10 & 11, and
Lots 3 & 4 of Block 3, Hayden Townsite

together with all right, title and interest which the undersigned may now have or hereafter acquire in
the real property included in any alleys, roads or streets adjacent to the above-described premises.

ADDRESS

LESSOR

Hayden, Utah

Florence J. Oberhansky
FLORENCE J. OBERHANSKY

STATE OF UTAH)
County of WINTAH) ss.

On this 22nd day of AUGUST, A.D. 1957, before me
HAYDEN FOSTER, a Notary Public in and for said County and State, personally
appeared FLORENCE J. OBERHANSKY,
known to me to be the person whose name IS subscribed to the within instrument, and acknowledged to me
that She executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

My Commission Expires:

Jan 4 1959

Hayden Foster
Notary Public in and for said County and State
Residing at Tabernash, Utah

WESLEY BASTIAN and VIRGINIA BASTIAN
ELMER H. GARDNER and HAZEL GARDNER, husband and wife

All that certain real property situated in the County of UTAH,
State of UTAH, being a portion of the lands described in Paragraph 1 of the foregoing
oil and gas lease from the undersigned and others, as Lessors, to Standard Oil Company of California,
as Lessee, dated APRIL 11, 1957, described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 3: Beginning 25 rods $\frac{1}{4}$ feet North of the Southeast
corner of the SE $\frac{1}{4}$; thence North 13 $\frac{1}{4}$ rods 12 $\frac{1}{2}$ feet;
thence West 6 $\frac{1}{4}$ rods; thence South 160 rods; thence
East 38 rods 12 $\frac{1}{2}$ feet; thence North 25 rods $\frac{1}{4}$ feet;
thence East 25 rods $\frac{1}{4}$ feet to beginning.

together with all right, title and interest which the undersigned may now have or hereafter acquire in
the real property included in any alleys, roads or streets adjacent to the above-described premises.

ADDRESS

LESSOR

Roosevelt, Utah

WESLEY BASTIAN

Merino, Utah
Box 410, Vernal, Utah

VIRGINIA BASTIAN

ELMER H. GARDNER

HAZEL GARDNER

STATE OF UTAH)
County of UTAH) ss.

On this 13TH day of MAY, A.D. 1957, before me
H. B. CREECH, a Notary Public in and for said County and State, personally
appeared ELMER H. GARDNER AND HAZEL GARDNER
known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me
that They executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

My Commission Expires:

Feb. 1st. 1960, 19 .

H. B. CREECH
Notary Public in and for said County and State

Residing at Vernal, Utah

WESLEY BASTIAN and VERGA M. BASTIAN, his wife
M. A. HARRISON and FLORENCE HARRISON, his wife,
ORIN SWAIN AND DONNA SWAIN, his wife

All that certain real property situated in the County of UTAH,
State of UTAH, being a portion of the lands described in Paragraph 1 of the foregoing
oil and gas lease from the undersigned and others, as Lessors, to Standard Oil Company of California,
as Lessee, dated APRIL 11, 1957, described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 2: Beginning at the Northwest corner NE¹SW⁴ -
thence East 80 rods; thence South 80 rods;
thence West 78 rods, thence North 78 rods;
thence West 2 rods; thence North 2 rods to
beginning.

Also, beginning at the Northeast corner NE¹SW⁴ - thence
West 80 rods; thence South 2 rods; thence East 80 rods;
thence North 2 rods to beginning.

together with all right, title and interest which the undersigned may now have or hereafter acquire in
the real property included in any alleys, roads or streets adjacent to the above-described premises.

ADDRESS

Neola, Utah

Roosevelt,
Utah

Roosevelt, Utah
STATE OF UTAH

County of DUCHESE

On this 22nd day of June
appeared FLORENCE HARRISON

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me
that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

My Commission Expires:

May 13, 1957

LESSOR

M. A. HARRISON

FLORENCE HARRISON

ORIN SWAIN

DONNA SWAIN

WESLEY BASTIAN

VERGA M. BASTIAN

Notary

A.D. 1957 before me

a Notary Public in and for said County and State, personally

Notary Public in and for said County and State

Residing at

STATE OF UTAH } ss.
County of DUCHESNE

On this 26th day of May, 1957, in the year 1957, personally appeared before me Keith Dale Cummings, a Notary Public in and for the State of Utah, GRIN SWAIN and BONNA SWAIN

known to me to be the person(s) described in and who executed the foregoing instrument, who acknowledged to me that They executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, on the day and year first above written.

Keith Dale Cummings
Notary Public for Duchesne County, Utah
Residing at Roosevelt, Utah

My Commission Expires: 20 Feb. 1961

STATE OF UTAH } ss.
County of DUCHESNE

On this 26th day of May, A.D. 1957, before me Keith Dale Cummings, a Notary Public in and for said State, personally appeared M. A. HARRISON known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

26 Feb 1961

Keith Dale Cummings
Notary Public in and for said county and state

WESLEY BASTIAN and VERGA M. BASTIAN, his wife,

All that certain real property situated in the County of UTAH,
State of UTAH, being a portion of the lands described in Paragraph 1 of the foregoing
oil and gas lease from the undersigned and others, as Lessors, to Standard Oil Company of California,
as Lessee, dated APRIL 11, 1957, described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 3: East 64 rods of SE $\frac{1}{4}$ NE $\frac{1}{4}$

together with all right, title and interest which the undersigned may now have or hereafter acquire in
the real property included in any alleys, roads or streets adjacent to the above-described premises.

ADDRESS

LESSOR

Roosevelt, Utah

WESLEY BASTIAN

VERGA M. BASTIAN

STATE OF _____)
County of _____) ss.

On this _____ day of _____, A.D. 19____, before me
_____, a Notary Public in and for said County and State, personally
appeared _____,
known to me to be the person whose name _____ subscribed to the within instrument, and acknowledged to me
that _____ he _____ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

My Commission Expires:

Notary Public in and for said County and State

Residing at _____

DEAN OBERHANSLY

All that certain real property situated in the County of UTAH,
State of UTAH, being a portion of the lands described in Paragraph 1 of the foregoing
oil and gas lease from the undersigned and others, as Lessors, to Standard Oil Company of California,
as Lessee, dated APRIL 11, 1957, described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

Section 2: W¹/₂SW¹/₄

together with all right, title and interest which the undersigned may now have or hereafter acquire in
the real property included in any alleys, roads or streets adjacent to the above-described premises.

ADDRESS

LESSOR

Hayden, Utah

DEAN OBERHANSLY

STATE OF _____)
County of _____) ss.

On this _____ day of _____, A.D. 19____, before me
_____, a Notary Public in and for said County and State, personally
appeared _____,
known to me to be the person whose name _____ subscribed to the within instrument, and acknowledged to me
that _____ he _____ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

Entry No. 80 717 Recorded at request of Standard Oil Co. of Cal. Fee Paid 10:10
Date Feb. 11, 1959 at 1:40 P.M. Lola Anderson Utah County Recorder
By: Eva Hatch Deputy Book 11-62 Page 340

My Commission Expires:

Notary Public in and for said County and State

Residing at _____

COPY OF U.R.C.P. RULE 56

Appendix "E"

Rule 56. Summary judgment.

(a) **For claimant.** A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) **For defending party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **Motion and proceedings thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **Case not fully adjudicated on motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **Form of affidavits; further testimony; defense required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) **When affidavits are unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) **Affidavits made in bad faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.